

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



DANA NESSEL
ATTORNEY GENERAL

MEMORANDUM

Warrant Denial Memorandum

[Rev. 02/11/2020]

2024

Danielle Hagaman Clark 08/09/24

APPROVED: _____
Bureau Chief Date

Check here when Division Chief has final approval authority for the request.

TO: Robyn Liddell
Division Chief
Criminal Trials and Appeals

Robyn Liddell

7-5-24

APPROVED: _____
Division Chief Date

FROM: Michael Doby
Assistant Attorney General
Criminal Trials and Appeals

CC: Robert Hayes
Section Head
Criminal Trials and Appeals

RE: **Request for Authority to Deny Criminal Charges**
Duling, Zachary Phillip AG# 2024-0396357-A
Evaluating potential charges regarding Officer Robert Olson

Due Date for Response: 5/31/24

Victim's position: Mr. Duling was charged with Assault with a Dangerous Weapon, R&O causing injury, and R&O in this incident. Trial is scheduled in Ingham County Circuit Court on May 28, 2024

Press release: No

Dates

This case was submitted directly to our office by Michigan State Police. There are no pending dates.

Recommendation

No charges should be authorized against Officer Robert Olson regarding the non-fatal shooting of Zachary Duling. Officer Olson's use of force was justified Self-Defense.

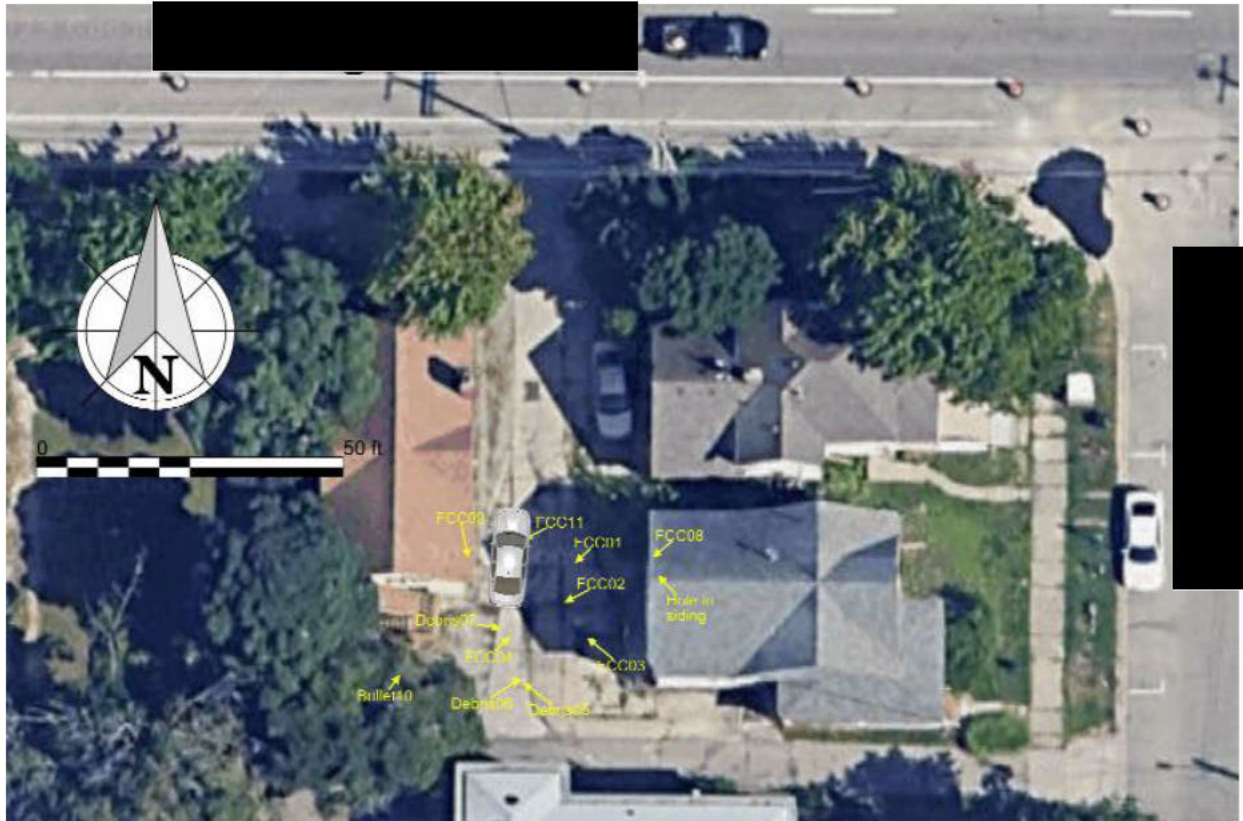
Introduction

On January 3, 2024, Zachary Duling fled from Jackson County Sheriff Department Deputies on two separate occasions. On January 10, 2024, Deputy Henderson of Jackson County tracked Duling to a home in Lansing and enlisted the help of the Lansing Police Department to arrest Duling on his warrants. Officers Robert Olson, Armando Pelligrino, Cornelius Brown and Zachariah Venderwerf attempted to arrest Duling at [REDACTED] in Lansing. Duling was in a white car and drove at Officer Olson as he and others ordered Duling to stop and get out of the car. Officer Olson fired several shots from his pistol at Duling as Duling drove at him with the car. Officer Olson was struck by the car and had minor injuries. Duling was struck by a bullet and also had only minor injuries. Duling successfully fled from police that night but was arrested the next day by the fugitive team. Duling has been charged by the Ingham County Prosecuting Attorney for this incident. We are reviewing for potential charges against Officer Robert Olson. No charges should issue against Officer Olson as his actions were justified under fleeing felon and self-defense theories.

Facts

On January 3rd 2024 Deputy Henderson of the Jackson County Sheriff's Department attempted to stop a white Chevy Cruze for a traffic violation. The car fled and a chase ensued reaching speeds of more than 100 miles per hour. The vehicle was registered to a [REDACTED]. Ms. [REDACTED] said that her [REDACTED] Zachary Duling is the only person who uses that car. Using social media Deputy Henderson was able to identify Zachary Duling as the driver and that he had been in the location where the traffic stop originated in order to sell methamphetamine. Zachary Duling's address with his probation agent is [REDACTED], Lansing.

On January 10, 2024 Deputy Henderson went to Lansing and located [REDACTED]. He approached officers Olson, Brown, Pelligrino, and Venderwerf of the Lansing Police Department to assist in locating and arresting Duling on active warrants. [REDACTED] is a small apartment building that can be accessed by car from both Saginaw St. and Seymour Avenue. The scale diagram below was later prepared by Michigan State Police.



Officer Olson parked his patrol vehicle on [REDACTED] St. just north of the driveway. Deputy Henderson drove by the location and flashed his brake lights, a predetermined signal that the suspect vehicle was visible. The officers decided to approach the car on foot, but as he exited his patrol car Officer Olson saw headlights coming down the driveway. He activated his lights and pulled his patrol vehicle into the driveway to block the exit and stop the suspect vehicle.



Figure 1 Pelligrino Bodycam looking South on [REDACTED], Olson's patrol vehicle, Duling's vehicle.

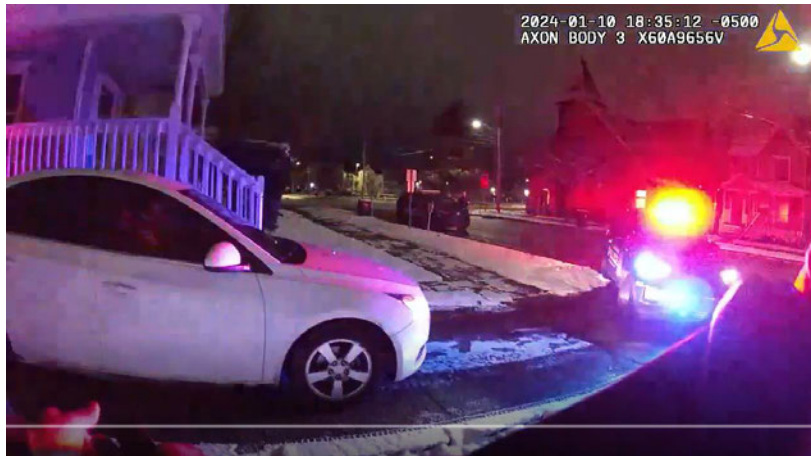


Figure 2 Brown Bodycam looking North on [REDACTED] from adjoining yard. Duling car to left, Olson's to right

Officers Brown and Pelligrino continued to approach the suspect vehicle on foot. They shouted for Duling to stop as well as saying “stop reaching.” Officer Olson had exited his car and was getting close to the driver’s side door when he saw Duling put the vehicle in reverse and then drive back up (west) in the driveway.



Figure 3 Brown Bodycam foot pursuit west in driveway from [REDACTED]

Olson chased on foot. The suspect vehicle stopped and it got close to the building at the end of the driveway. Officer Olson caught up and drew his pistol.



Figure 4 Brown Bodycam looking west at intersection of driveways, Olson in the foreground

gain when Duling looked at him and then turned the vehicle in his direction (north) and accelerated.

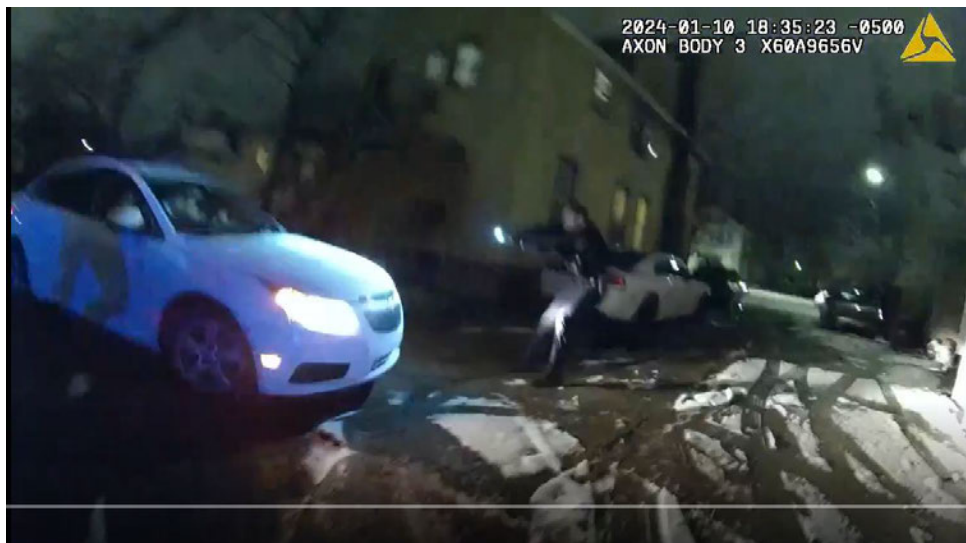


Figure 5 Brown Bodycam looking northwest in intersection of driveways, Olson in the foreground



Figure 6 Olson Bodycam looking west in intersection



Figure 7 Olson Bodycam looking generally south

Officer Olson was struck by the side of the vehicle, pushed into a parked car, and fell to the ground. As the car was accelerating towards him and as he was being hit Officer Olson fired his pistol at Duling.



Figure 8 Olson bodycam looking north, Olson was briefly pinned between Duling's car and parked white car.



Figure 9 Brown Bodycam looking northeast, Olson on the ground

Olson wrote and signed a statement about the incident on January 15, 2024. Regarding the decision to shoot he said

I recall being near the front driver's side of the vehicle when I observed Duling looking at me as he turned the vehicle in my direction and accelerated. Fearing for my life, I drew my serviceissued handgun and raised it towards Duling in the driver's seat. I placed my left hand out in front of myself to brace myself as the vehicle rapidly approached me. I felt that I was unable to escape being struck by Duling as he turned and accelerated towards me even as I attempted to move out of the way. I feared that I was going to be pulled under the vehicle and run over at that time. I raised my firearm with my right hand and aimed towards Duling with the best of my ability and began to fire even as the suspect vehicle was actively striking my body. I do not recall how many shots I was able to fire but only that I stopped as the force of the vehicle hitting my body threw me to the ground.

The facts in Olson's signed statement are consistent with his, and the other officers' bodycam footage of the incident. A round count shows that he fired 7 times. No other officers fired their weapons. No one aside from Duling was struck by gunfire.

Duling drove north out of the driveway and then turned the wrong way on [REDACTED] St. Officer Olson suffered minor injuries from being hit by the car and was treated at Sparrow Hospital. Duling was arrested the next day by the fugitive team. Duling was taken to Sparrow Hospital where he was treated a released for a bullet graze from the January 10 incident. Duling claimed he didn't know that Olson and the others were police officers, bodyworn camera footage shows that they were all in uniform and Officer Olson's car was fully marked and his overhead lights were on.

Materials reviewed

- Bodycam of officers Olson, Vanderwerf, Pelligrone and Brown and combined bodycam of those officers prepared by MSP AVU.
- Vehicle camera of Officers Olson,
- Signed statement of Officer Olson, dated 1/15/2024
- Lansing Police Department Report 2451900324 (subsequent arrest of Duling)
- CAD Notes

- Jackson County Sheriff Report 138-132-24 (original incident in Jackson)
- Statements of Officers Vanderwerf, Pelligrino, and Brown
- Michigan State Police Report 010-0000015-24 and supplemental reports 1 through 6
- Officer Olson medical reports from Sparrow Hospital
- Recorded radio traffic
- Scene photographs
- Scale diagram prepared by MSP

Law and Policy

In 2006 the State of Michigan enacted the Self Defense Act, Act 309 of 2006. M.C.L. 780.972 provides that an individual (which would include a police officer) may use deadly force against another, without any duty to retreat, provided they were not engaged in the commission of a crime and either (a) they “honestly and reasonably believe that the use of deadly force is necessary to prevent the imminent death of or imminent great bodily harm to himself or herself or to another” or (b) they “honestly and reasonably believe that the use of deadly force is necessary to prevent the imminent sexual assault of himself or herself or of another.” Further an individual may use deadly force if they “honestly and reasonably believe that the use of that force is necessary to defend oneself or another from the imminent unlawful use of force by another individual.” Pursuant to M.C.L. 780.961 (Deadly Force, Act 310 of 2006), if an individual uses deadly force pursuant to M.C.L. 780.972, they have committed no crime in the exertion of that force. A prosecutor may only charge said individual with a crime if the prosecutor can provide evidence “establishing that the individual’s actions were not justified.” M.C.L. 780.961(1)(2). *See also, People v. Guajardo*, 300 Mich App 26 (2013) (discussing and upholding Michigan’s Self Defense Act and the use of deadly force).

The Michigan Model Criminal Jury Instructions state in M Crim JI 7.15 (Use of Deadly Force in Self-Defense) that if an individual acted in lawful self-defense, their actions would be justified and thus they would not be guilty of crime. In making this determination one “should consider all the evidence” and should consider the following three rules, judging the individual’s actions according to how the circumstances appeared to that individual at the time they acted. The first rule provides that the individual must “have honestly and reasonably believed that [they were] in danger of being [killed/seriously injured/sexually assaulted].” *Id.* The

individual need not be correct in their evaluation of the danger presented, so long as their belief was honest and reasonable. Second, the threat against the individual must have been in fear of death, seriously physical injury or a sexual assault. In making this evaluation, one should consider all the circumstances surrounding the action, and consider how they appeared to the individual at the time they reacted. *Id.* Third, the individual must have believed the threat was immediate and they used the amount of force necessary at the time to protect themselves. *Id.* See also, *People v. Goree*, 296 Mich. App. 293 (2012) and *People v. Conyer*, 281 Mich. App. 526 (2008).

While an individual may only use the deadly force where it is necessary to do so, they do not have a duty to retreat. M Crim JI 7.16. An individual does not have to retreat from attack if they “reasonably believe that an attacker is about to use a deadly weapon, nor if the [individual] is subject to a sudden, fierce, and violent attack.” *Id.* An individual also does not have to retreat if they were not engaged in the commission of a crime, had a legal right to be where they were and had an honest and reasonable belief that the use of deadly force was necessary to prevent imminent death, great bodily harm or sexual assault. *Id.* See also, *People v. Riddle*, 467 Mich. 116 (2002) and *People v. Conyer*, 281 Mich. App. 526 (2008).

Further, the U.S. Supreme Court has also ruled regarding the right to use deadly force and in particular in the context of police officers. In *Tennessee v. Gardner*, the U.S. Supreme Court stated “[w]here the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others, it is not constitutionally unreasonable to prevent escape by using deadly force. Thus, if the suspect threatens the officer with a weapon or there is probable cause to believe that he has committed a crime involving the infliction or threatened infliction of serious physical harm, deadly force may be used if necessary to prevent escape, and if, where feasible, some warning has been given.” *Tenn. v. Garner*, 471 US 1, 11-12 (1985).

The U.S. Supreme Court also analyzed and ruled on the issue of police use of force in *Graham v. Connor*, 490 US 386 (1989). In *Graham v. Connor*, the Court held that claims alleging police officers have used excessive force must be analyzed under the Fourth Amendment “reasonableness standard” and not under a “substantive due process” approach. *Id.* at 395. Additionally, “[t]he ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.” *Id.* at 396. In determining whether an officer’s actions were reasonable, there must be “allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving...” *Id.* at 396-97.

Michigan courts have also spoken on the issue of police utilizing deadly force. In *Delude v. Raasakka*, the Michigan Supreme Court found that police can use “force reasonable under the circumstances to effect [sic] an arrest” and “may take what action is reasonable to protect themselves in the course of an arrest or an attempted arrest.” *Delude v. Raasakka*, 391 Mich. 296, 303 (1974). Further, in *People v. Doss*, the Court discussed what constituted reasonable force and in the Court’s reasoning they looked to *American Jurisprudence 2d*, where it is stated:

What amounts to reasonable force on the part of an officer making an arrest usually depends on the facts in the particular case, and hence the question is for the jury. The reasonableness of the force used must be judged in the light of the circumstances as they appeared to the officer at the time he acted, and the measure is generally considered to be that which an ordinarily prudent and intelligent person, with the knowledge and in the situation of the arresting officer, would have deemed necessary under the circumstances. The officer has discretion, within reasonable limits, to determine the amount of force which the circumstances require, and his is not guilty of wrong unless he arbitrarily abuses the power confided in him. 5 Am Jur 2d, Arrest, § 81, p 768. *Doss*, 406 Mich. 90, 102 (1979).

The court in *Doss* further stated, “police officers making a lawful arrest may use that force which is reasonable under the circumstances... and ... is not required to retreat before a display of force by his adversary.” *Doss*, 406 Mich at 102.

The Lansing Police Department instructs its officers that Deadly Force can only be used to prevent imminent death or great bodily harm consistent with MCL 760.972. Officers are required to identify themselves and provide a verbal warning before using deadly force whenever possible. The Department further instructs officers that:

Firearms may be drawn or displayed when, based on the totality of the circumstances, an officer feels his or her safety is in peril and such danger could be construed as life threatening; or when the person to be apprehended has committed, or there is probable cause to believe the person to be apprehended has committed, a violent felony offense and/or the possibility of confrontation with deadly force exists. LPD Manual §600.07 at 4.

Analysis

Officer Olson was in the process of making an arrest on a felony warrant when he was met with force by Zachary Duling. Officer Olson reasonably feared death or great bodily harm when he fired his pistol at Duling while Duling was driving at him and hitting him with the car. Olson's factual statements are corroborated by the other officers at the scene as well as the bodycam videos. The video shows that Officer Olson continued to fire after Duling had hit him with the car and was fleeing. An argument could be made that force was no longer justified by self-defense, however force was still justified as Duling was a fleeing felon. Duling had valid felony warrants that Officer Olson was attempting to arrest him on. More importantly in the moment Duling had just committed Assault with a Dangerous Weapon and Resisting and Obstructing Causing Injury against Officer Olson. Olson was justified in using force to attempt to arrest Duling for those crimes. Charges against Robert Olson should be denied.

Media Relationship

There were local tv and newspaper stories at the time of the incident. The Lansing Police Department released bodycam to the media.

Conclusion

No charges should be issued against Robert Olson.